

United States Postal Service

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contract between the reporter and the Postal Service.

§ 958.17 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written Initial Decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relies upon in determining whether the respondent is liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018, and, if liability is found, shall set forth the amount of any civil penalties, clean-up costs and/or damages imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her Initial Decision. A party may, in accordance with § 958.18, appeal an adverse Initial Decision to the Judicial Officer. Unless a party timely appeals in accordance with § 958.18, the Presiding Officer's Initial Decision, including the findings and determinations, becomes the final agency decision.

§ 958.18 Appeal of initial decision to Judicial Officer.

(a) *Notice of appeal and supporting brief.* A party may appeal an adverse Initial Decision by filing, within 30 days after the Presiding Officer issues the Initial Decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period but only if the party files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(1) The Notice of Appeal must be accompanied by a written brief specifying the party's exceptions, and any reasons for such exceptions, to the Presiding Officer's Initial Decision.

(2) Within 30 days of receiving the party's brief, the opposing party may file with the Judicial Officer a response to the specified exceptions to the Presiding Officer's Initial Decision.

(b) *Form of review.* Review by the Judicial Officer will be based entirely on the record and written submissions.

(1) The Judicial Officer may affirm, reduce, reverse, or remand any determination about a penalty or assessment by the Presiding Officer.

(2) The Judicial Officer shall not consider any argument or objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the argument or objection before the Presiding Officer was caused by extraordinary circumstances.

(3) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer may remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of Judicial Officer.* The Judicial Officer shall promptly serve each party to the appeal with a copy of his or her decision. The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties.

§ 958.19 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), an accurate designation of the document, and the name, address, and telephone number of the party on whose behalf the paper was filed. It shall also be signed by the party or party representative submitting the document.

(b) The original and three copies of all pleadings and documents in a proceeding conducted under this part shall be filed with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201-3078. Normal Recorder business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time. The Recorder will transmit a copy of each document filed to the other party, and the original to the Presiding Officer.

(c) Pleadings or other document transmittals to, or communications with, the Postal Service, other than to the Recorder under paragraph (a) of this section, shall be made through the

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Determining Official or designated Postal Service attorney. If a notice of appearance by a representative is filed on behalf of the respondent, pleadings or document transmittals to, or communications with, the respondent shall be made through his or her representative.

§ 958.20 Service of notice of docketing and hearing, other documents.

Unless otherwise specified, service of a Notice of Docketing and Hearing or any other document under this part shall be effected by registered or certified mail, return receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the party or other person sought to be served, or his or her agent, a written acknowledgement of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

§ 958.21 Computation of time.

In computing any period of time provided for by this part, or any order issued pursuant to this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day. Except as otherwise provided in these rules or an applicable order, prescribed periods of time are measured in calendar days rather than business days.

§ 958.22 Continuances and extensions.

Continuances and extensions may be granted under these rules for good cause shown.

§ 958.23 Settlement.

Either party may make offers of settlement or proposals of adjustment at any time. The Determining Official has the exclusive authority to compromise or settle any determinations of liability for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations

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under 39 U.S.C. 3018, without the consent of the Presiding Officer or Judicial Officer.

PART 959—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

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AUTHORITY: 39 U.S.C. 204, 401; 39 CFR 224.1(c)(6)(ii)(D).

SOURCE: 39 FR 33213, Sept. 16, 1974, unless otherwise noted.

§ 959.1 Authority for rules.

These rules are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 959.2 Scope of rules.

These rules apply to all Postal Service proceedings in which part 310 of this title authorizes appeals to the Judicial Officer from demands for postage for matter carried in violation of the Private Express Statutes, and in proceedings to revoke, as to any person,